

REMARKS

This is in response to the Restriction Requirement mailed August 19, 2008. Applicants hereby elect the invention of Group I, Claims 1-17, drawn to a method for detecting and counting the microorganisms in a sample.

Claims 18-20 are withdrawn herein as being directed to non-elected claims. Applicants will request rejoinder of the non-elected subject matter and will perfect this request when the elected species are considered allowable. Applicants also reserve the right to file one or more divisional applications directed to non-elected subject matter.

With the entry of this amendment, claims 1-17 will be active in this case. Claim 1 has been amended. Applicants respectfully request examination of the instant application on the merits in due course.

The amendments to Claim 1 are based on original claims 1 and 14, and on the specification. For instance, by 'conditioning' the microorganism sought in a sample according to the method of the invention, it is meant 'inducing' or 'activating' at least one specific activity or property of the aforementioned microorganism." See Paragraph [0075]. The specification describes "the fluorescent labeling of the microorganisms sought, preferably obtained after immunomagnetic concentration" at Paragraph [0091]. The specification describes "the fluorescent labeling of the microorganisms sought, ..., is carried out by adding to the medium containing the aforementioned microorganisms at least one substrate comprising one part specific to the enzymatic activity to be indicated and one label part" at paragraph [0091]. Applicants also point out that "[i]n the context of the present invention, it is important that the transformation of the substrate takes place inside the bacteria and that the

fluorescent product is retained in the cell” is set forth in paragraph [0096]. Additionally, “ ..., the detection and analysis of the fluorescence making possible the numeration or counting of the microorganisms sought is carried out by a technique chosen from the group comprising: flow cytometry, filtration cytometry and fluorescence microscopy” is described in Paragraph [0116].

The Examiner has stated that the technical feature of Group I is anticipated by Pyle *et al.* (WO 95/31481). Applicants traverse this objection as it may be applicable to amended claim 1.

Pyle *et al.* disclose a method for detecting and counting, which is not based on an inducible enzymatic activity (i.e., respiration) and certainly not glycosidases, esterases, phosphatases and sulfatases. Moreover, Pyle *et al.* disclose a method for detecting and counting, which method does not use any enzymatic substrate to be cleaved by said enzymatic activity. In fact, the Pyle *et al.* method only uses fluorescent antibodies. These distinctions over Pyle *et al.* enable the method of the invention to detect and count specific microorganisms with a great sensibility and specificity.

CONCLUSION

Should the Examiner believe that anything further is necessary in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 01-2300 referencing docket number 029440.00009.

Respectfully submitted,

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